

1 ANDREW J. KOZLOW, SBN 252295  
2 LEILA M. MOHSENI, SBN 315591  
3 ERICKSEN ARBUTHNOT  
4 2300 Clayton Road, Suite 350  
5 Concord, CA 94520  
6 Telephone: (510) 832-7770  
7 Facsimile: (510) 832-0102  
8 [akozlow@ericksenarbuthnot.com](mailto:akozlow@ericksenarbuthnot.com)  
9 [lmohseni@ericksenarbuthnot.com](mailto:lmohseni@ericksenarbuthnot.com)

10 Attorneys for Defendants,  
11 Mercy Retirement Care Center and  
12 Tamra Marie Tsanos

13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 SAMIR SAIRAM, M.D., an individual;  
16 SAMIR SAIRAM, M.D., INC., a California  
17 professional corporation;

18 Plaintiff,

19 vs.

20 MERCY RETIREMENT AND CARE  
21 CENTER, a California corporation; TAMRA  
22 MARIE TSANOS, and DOES 1-25

23 Defendants.

**Case No. 3:21-cv-04335-EMC**

**DEFENDANT MERCY RETIREMENT AND  
CARE CENTER'S SECOND AMENDED  
ANSWER TO PLAINTIFFS' FIRST  
AMENDED COMPLAINT**

24 Defendant MERCY RETIREMENT AND CARE CENTER ("Defendant") hereby  
25 answers the First Amended Complaint ("Complaint") of plaintiffs SAMIR SAIRAM, M.D.,  
26 and SAMIR SAIRAM, M.D., INC. ("Plaintiffs") as follows:

**ANSWER TO ALLEGATIONS OF COMPLAINT**

**PRELIMINARY STATEMENT**

27 1. As to Paragraph 1, the paragraph does not contain allegations but rather  
28 general discussion and argument. As to the first and second sentences of Paragraph 1,

1 Defendant denies the allegations. Based on a current lack of sufficient information and  
2 knowledge, Defendant denies the remainder of the paragraph.

3 **THE PARTIES, JURISDICTION, AND VENUE**

4 2. As to Paragraph 2, the paragraph does not contain allegations but rather  
5 general discussion. Defendant admits that Dr. Sairam is a licensed physician. Defendant  
6 denies the allegations of this paragraph based on a current lack of sufficient information and  
7 knowledge.

8 3. As to Paragraph 3, Defendant admits the statements of this paragraph.

9 4. As to Paragraph 4, Defendant admits the statements of this paragraph.

10 5. As to Paragraph 5, Defendant admits the allegations of this paragraph.

11 6. As to Paragraph 6, Defendant admits the statements of this paragraph.

12 7. As to Paragraph 7, Defendant admits the statements of this paragraph.

13 **FACTUAL ALLEGATIONS**

14 8. As to Paragraph 8, Defendant admits the allegations of this paragraph, except  
15 as to first sentence which is a legal argument.

16 9. As to Paragraph 9, Defendant admits the allegations of this paragraph.

17 10. As to Paragraph 10, Defendant admits the allegations of this paragraph.

18 11. As to Paragraph 11, Defendant admits the allegations of this paragraph.

19 12. As to Paragraph 12, Defendant denies the allegations of this paragraph.

20 13. As to Paragraph 13, Defendant denies the allegations of first sentence. The  
21 remainder of paragraph contains no allegations, but rather a statement of law. Defendant  
22 admits the paragraph accurately states a portion of the regulation cited but denies any  
23 purported interpretation and application of the regulation.

24 14. As to paragraph 14, Defendant denies the allegations of this paragraph.  
25 Paragraph 14 further contains legal conclusions and argument as to which no response is  
26 required.

27 15. As to Paragraph 15, Defendant denies the allegations of this paragraph.

28 16. As to Paragraph 16, Defendant admits that the patient suffered cardiac arrest

1 and there were attempts at resuscitation, but denies the remainder of this paragraph

2 17. As to Paragraph 17, Defendant denies the allegations of this paragraph.

3 18. As to Paragraph 18, Defendant admits the allegations of this paragraph, except  
4 as to “unexpectedly receive notice,” which Defendant denies based on a current lack of  
5 sufficient information and knowledge.

6 19. As to Paragraph 19, Defendant denies the allegations of this paragraph.

7 20. As to Paragraph 20, Defendant denies the allegations of this paragraph.

8 21. As to Paragraph 21, Defendant denies the allegations of this paragraph based  
9 on a current lack of sufficient information and knowledge.

10 22. As to Paragraph 22, Defendant denies the allegations of this paragraph.

11 23. As to Paragraph 23, Defendant denies the allegations of this paragraph.

12 24. As to Paragraph 24, Defendant denies the allegations of this paragraph.

13 25. As to paragraph 25, Defendant admits that Mercy mailed a letter to residents,  
14 announcing Dr. Sairam’s departure as medical director. Mercy denies it retaliated against Dr.  
15 Sairam in any way. Mercy denies it interfered in Dr. Sairam’s patient-physician relationship  
16 with residents in any way. Mercy denies the remaining allegations of this paragraph based  
17 on a current lack of sufficient information and knowledge.

18 26. As to Paragraph 26, Defendant admits that Plaintiff Sairam had an email  
19 exchange with Nicole Foreman on or about the referenced date. Mercy denies the first  
20 sentence of this paragraph, and denies there was any interference whatsoever. Mercy denies  
21 the remaining allegations of this paragraph based on a current lack of sufficient information  
22 and knowledge.

23 27. As to Paragraph 27, Defendant admits a communication was made by Ms. Fay  
24 on the referenced date but denies the remaining allegations of this paragraph..

25 28. As to Paragraph 28, Defendant admits that Plaintiff Sairam sent a cease-and-  
26 desist letter on or about the referenced date, but denies the remaining allegations of this  
27 paragraph.

28 29. As to Paragraph 29, Defendant admits that Mercy sent a letter to residents

1 announcing Dr. Sairam's departure as medical director, but denies the remaining allegations  
2 of this paragraph.

3 30. As to Paragraph 30, Defendant denies the allegations of this paragraph.

4 31. As to Paragraph 31, Defendant denies the allegations of this paragraph.

5 32. As to Paragraph 32, Defendant denies the allegations of this paragraph.

6 33. As to Paragraph 33, Defendant admits that it made a policy change on or  
7 about the referenced date, but denies the remaining allegations of this paragraph. Paragraph  
8 33 further contains legal conclusions and argument as to which no response is required.

9 34. As to Paragraph 34, Defendant admits that it made a policy reinforcement on  
10 or about the referenced date, but denies the remaining allegations of this paragraph since the  
11 policy was applicable to all physicians. Paragraph 34 further contains legal conclusions and  
12 argument as to which no response is required.

### 13 **FIRST CAUSE OF ACTION**

#### 14 **Intentional Interference with Contractual Relationships**

15 35. As to Paragraph 35, Defendant incorporates its responses to Paragraphs 1  
16 through 34.

17 36. As to Paragraph 36, Defendant denies the allegations of this paragraph based  
18 on a current lack of sufficient information and knowledge

19 37. As to Paragraph 37, Defendant denies the allegations of this paragraph.

20 38. As to Paragraph 38, Defendant denies the allegations of this paragraph.

21 39. As to Paragraph 39, Defendant denies the allegations of this paragraph.

22 40. As to Paragraph 40, Defendant denies the allegations of this paragraph.

23 41. As to Paragraph 41, Defendant denies the allegations of this paragraph based  
24 on a current lack of sufficient information and knowledge.

25 42. As to Paragraph 42, Defendant denies the allegations of this paragraph.

### 26 **SECOND CAUSE OF ACTION**

#### 27 **Intentional Interference with Prospective Economic Advantage**

28 43. As to Paragraph 43, Defendant incorporates its responses to Paragraphs 1

1 through 42.

2 44. As to Paragraph 44, Defendant admits that Plaintiff Sairam was contracted  
3 with Mercy prior to the referenced date, but Defendant denies the allegations of this  
4 paragraph based on a current lack of sufficient information and knowledge.

5 45. As to Paragraph 45, Defendant denies the allegations of this paragraph.

6 46. As to Paragraph 46, Defendant denies the allegations of this paragraph.

7 47. As to Paragraph 47, Defendant denies the allegations of this paragraph.

8 48. As to Paragraph 48, Defendant denies the allegations of this paragraph.

9 **THIRD CAUSE OF ACTION**

10 **Violation of Business & Professions Code, § 510**

11 49. As to Paragraph 49, Defendant incorporates its responses to Paragraphs 1  
12 through 48.

13 50. As to Paragraph 50, Defendant admits that Dr. Sairam is a health care  
14 practitioner but denies the remainder of the paragraph.

15 51. As to Paragraph 51, Defendant admits that Defendant “terminated Dr.  
16 Sairam’s medical directorship with Mercy”, but denies the remainder of the allegations of  
17 this paragraph.

18 52. As to Paragraph 52, Defendant denies the allegations of this paragraph.

19 53. As to Paragraph 53, Defendant denies the allegations of this paragraph.

20 **FOURTH CAUSE OF ACTION**

21 **Violation of California Business & Professions Code § 2065**

22 54. As to Paragraph 54, Defendant incorporates its responses to Paragraphs 1  
23 through 53.

24 55. As to Paragraph 55, Defendant admits that Dr. Sairam is a licensed physician,  
25 but denies the remaining portions of this paragraph.

26 56. As to Paragraph 56, Defendant admits that Defendant “terminated Dr.  
27 Sairam’s medical directorship with Mercy,” but denies the remainder of the allegations of  
28 this paragraph.

1 57. As to Paragraph 57, Defendant denies the allegations of this paragraph.

2 58. As to Paragraph 58, Defendant denies the allegations of this paragraph.

3 **FIFTH CAUSE OF ACTION**

4 **Civil RICO, 18 U.S.C. § 1962(c) and (d)**

5 59. As to Paragraph 59, Defendant incorporates its responses to Paragraphs 1  
6 through 58.

7 60. As to Paragraph 60, Defendant denies the allegations of this paragraph.

8 61. As to Paragraph 61, Defendant denies the allegations of this paragraph.

9 62. As to Paragraph 62, Defendant denies the allegations of this paragraph.

10 63. As to Paragraph 63, Defendant denies the allegations of this paragraph.

11 64. As to Paragraph 64, Defendant denies the allegations of this paragraph.

12 65. As to Paragraph 65, Defendant denies the allegations of this paragraph.

13 66. As to Paragraph 66, Defendant denies the allegations of this paragraph.

14 **SIXTH CAUSE OF ACTION**

15 **Wrongful Termination in Violation of Public Policy**

16 67. As to Paragraph 67, Defendant incorporates its responses to Paragraphs 1  
17 through 67.

18 68. As to Paragraph 68, Defendant denies the allegations of this paragraph.

19 69. As to Paragraph 69, Defendant admits that on or about the referenced date  
20 Mercy notified Plaintiff Sairam of terminating the medical directorship.

21 70. As to Paragraph 70, Defendant denies the allegations of this paragraph.

22 71. As to Paragraph 71, Defendant denies the allegations of this paragraph.

23 **SEVENTH CAUSE OF ACTION**

24 **Violation of Business & Professions Code, § 17200**

25 72. As to Paragraph 72, Defendant incorporates its responses to Paragraphs 1  
26 through 71.

27 73. As to Paragraph 73, Defendant admits the allegations in this paragraph in that  
28 it is California nonprofit corporation .

1           74. As to Paragraph 74, this paragraph contains no allegations, but rather a  
2 statement of law. Defendant admits the paragraph accurately states a portion of the statute  
3 cited.

4           75. As to Paragraph 75, Defendant denies the allegations of this paragraph.

5           76. As to Paragraph 76, Defendant denies the allegations of this paragraph and  
6 including all subparts.

7           77. As to Paragraph 77, Defendant denies the allegations of this paragraph  
8 including all subparts.

9           78. As to Paragraph 78, Defendant denies the allegations of this paragraph  
10 including all subparts.

11           79. As to Paragraph 79, Defendant denies the allegations of this paragraph.

12           80. As to Paragraph 80, Defendant denies the allegations of this paragraph.

13           81. As to Paragraph 81, Defendant denies the allegations of this paragraph.

14                           **ANSWER TO PRAYER FOR RELIEF**

15           Defendant denies each and every allegation and assertion contained in plaintiff's  
16 Prayer for Relief (Paragraphs 1 through 8).

17                           **AFFIRMATIVE DEFENSES**

18           FIRST AFFIRMATIVE DEFENSE: Defendant alleges that Plaintiffs were careless,  
19 negligent and/or otherwise at fault in and about the matters alleged in the Complaint, and that  
20 such carelessness, negligence and/or other fault proximately caused the occurrence of the  
21 incident and the loss and damages alleged and that said fault proportionately reduces any  
22 potential recovery against Defendant. Such conduct includes, but is not limited to, failure to  
23 respond timely to inquires from staff, failure to respond timely to inquires from patient  
24 families, failure to abide by COVID-19 protocols, and unprofessional communication with  
25 staff of Defendant.

26           SECOND AFFIRMATIVE DEFENSE: Defendant alleges that neither the Complaint  
27 nor any cause of action in the Complaint states facts sufficient to substantiate a cause of  
28 action against Defendant. Plaintiff was never an employee of Defendant thus there is no

1 basis to claim wrongful termination. In addition, the complaint fails to set forth facts setting  
 2 forth a pattern and practice of racketeering to support a claim under 18 U.S.C. §1962(c)  
 3 and/or (d). Moreover, the complaint fails to plead facts showing any interference with  
 4 contractual relationships or facts to support the claim that Plaintiff Sairam was unable to  
 5 continue to serve as a treating physician for patients at Mercy. The complaint further fails to  
 6 plead facts to substantiate a claim of any retaliation under Bus. & Prof. Code §510 and/or  
 7 §2056 in that no facts of “advocating for appropriate health care” are pled, nor could they as  
 8 such facts do not exist. Given the preceding causes of actions were not substantially pled, a  
 9 claim under Bus. & Prof. Code §17200 likewise is inadequately pled as it is derivative of  
 10 those claims.

11 **THIRD AFFIRMATIVE DEFENSE:** Defendant alleges that on information and  
 12 belief, Plaintiffs’ alleged injuries, losses, or damages, if any there were, were aggravated by  
 13 Plaintiffs’ failure to use reasonable diligence to mitigate them. Plaintiff Dr. Sairam remains  
 14 a licensed physician with the full ability to practice medicine. Any claimed lost revenue  
 15 (which Mercy denies it is responsible for) would conceivably be mitigated by other patients  
 16 in Plaintiff’s practice.

17 **FOURTH AFFIRMATIVE DEFENSE:** Defendant alleges that Plaintiffs have  
 18 waived, expressly or by implication, his right to maintain the action filed in this case.

19 **FIFTH AFFIRMATIVE DEFENSE:** Defendant allege that Plaintiffs are estopped by  
 20 action of law or by conduct from maintaining this action filed in this case against Defendant.  
 21 Plaintiffs seek compensation for claimed financial losses that were solely based on Plaintiff  
 22 Dr. Sairam’s own actions or failure to mitigate his own damages.

23 **SIXTH AFFIRMATIVE DEFENSE:** Defendant alleges that Plaintiffs are guilty of  
 24 “unclean hands” in the matters set forth in the Complaint, which conduct extinguishes the  
 25 right to equitable relief in this action. Such conduct includes, but is not limited to, failure to  
 26 respond timely to inquiries from staff, failure to respond timely to inquiries from patient  
 27 families, failure to abide by COVID-19 protocols, and unprofessional communication with  
 28 staff of Defendant.



1 SEVENTH AFFIRMATIVE DEFENSE: Defendant alleges that it has complied with  
2 all statutory duties required of them, and are, therefore, relieved from any liability.

3 EIGHTH AFFIRMATIVE DEFENSE: Defendant alleges that Plaintiffs' Complaint,  
4 and each cause of action therein, is barred because Defendant fully complied with all  
5 obligations imposed by case law, statute, contract(s), or any other source.

6 NINTH AFFIRMATIVE DEFENSE: Defendant alleges that Plaintiffs lack standing to  
7 assert the causes of action set forth in the Complaint. Plaintiff Dr. Sairam was never an  
8 employee of Mercy and as such there is no basis to assert wrongful termination in violation of  
9 public policy.

10 TENTH AFFIRMATIVE DEFENSE: Defendant alleges that at all times it acted under  
11 legal right or in a good faith belief in the existence of a legal right.

12 ELEVENTH AFFIRMATIVE DEFENSE: Defendant alleges that at all times  
13 mentioned in the Complaint, Defendant acted in good faith, with reasonable and probable  
14 cause for its actions. Defendant acted within the terms of the contract to elect to terminate  
15 the contract upon proper notice.

16 TWELFTH AFFIRMATIVE DEFENSE: Defendant alleges that the complaint fails to  
17 state facts sufficient to form a basis for the awarding of attorneys' fees.

18 THIRTEENTH AFFIRMATIVE DEFENSE: Defendant alleges that the Complaint is  
19 barred, in whole or in part, because at all times Defendant's actions towards Plaintiffs were  
20 justified, privileged, reasonable, in good faith, without any improper motive, purpose or means,  
21 and were further without any hatred, ill will, malice or intent to injure. Defendant acted within  
22 the terms of the contract to elect to terminate the contract upon proper notice.

23 FOURTEENTH AFFIRMATIVE DEFENSE: Defendant alleges that the subject  
24 agreement allowed for no-cause termination of the agreement, which Defendant exercised.

25 FIFTEENTH AFFIRMATIVE DEFENSE: Defendant alleges that the Plaintiffs are  
26 barred from recovery of damages based upon the doctrine of after-acquired evidence.  
27 Defendant denies that Dr. Sairam was at any time an employee of Defendant, but both prior to  
28 the time the contract was terminated and extending afterwards Dr. Sairam engaged in

1 unprofessional behavior. Such conduct includes, but is not limited to, failure to respond  
 2 timely to inquiries from staff, failure to respond timely to inquiries from patient families,  
 3 failure to abide by COVID-19 protocols, and unprofessional communication with staff of  
 4 Defendant.

5 SIXTEENTH AFFIRMATIVE DEFENSE: The Complaint, and each of its causes of  
 6 action, is barred because Defendant did not engage in the alleged retaliation set forth in the  
 7 Complaint.

8 SEVENTEENTH AFFIRMATIVE DEFENSE: The Complaint, and each of its causes  
 9 of action, is barred because all actions taken by Defendant were for legitimate business  
 10 reasons. Defendant acted within the terms of the contract to elect to terminate the contract  
 11 upon proper notice.

12 EIGHTEENTH AFFIRMATIVE DEFENSE: Defendant alleges that all or some of  
 13 Plaintiffs' causes of action are barred given Plaintiffs were an independent contractor of  
 14 Defendant Mercy.

15 NINETEENTH AFFIRMATIVE DEFENSE: Plaintiffs' complaint fails to allege facts  
 16 sufficient to support a claim of punitive damages. The decision to terminate the directorship  
 17 contract, and all actions associated with the termination, were done for legitimate reasons and  
 18 per the terms of the contract. All actions taken after the termination were done in accordance  
 19 with standard of the industry and in-line with the introduction of a new medical director.

20 TWENTIETH AFFIRMATIVE DEFENSE: Plaintiffs' complaint fails in its entirety as  
 21 all actions taken by Defendant were for legitimate, non-retaliatory purposes. Defendant acted  
 22 within the terms of the contract to elect to terminate the contract upon proper notice.

23 TWENTY-FIRST AFFIRMATIVE DEFENSE: Plaintiffs' complaint fails in its entirety  
 24 to plead sufficient facts that would give rise to individual liability for Defendant Tsanos.

25 TWENTY-SECOND AFFIRMATIVE DEFENSE: Defendant reserves the right to  
 26 assert other defenses as they become apparent or available, and to amend this answer  
 27 accordingly. No defense is being knowingly or intentionally waived. Defendant further  
 28 reserves the right to assert additional, relevant affirmative defenses to the extent they become

1 known through discovery.

2  
3 **PRAYER FOR RELIEF**

4 WHEREFORE, Defendant prays for judgment from this Court as follows:

- 5 1. Plaintiffs take nothing by this action;
- 6 2. That the Complaint be dismissed with prejudice and that judgment be entered  
7 against Plaintiffs and in favor of Defendant on each cause of action;
- 8 3. That Defendant be awarded their attorneys' fees and costs of suit herein to the  
9 extent permitted under applicable law; and
- 10 4. Such other and further relief as the Court deems appropriate and proper.
- 11

12 DATED: September 3, 2021

ERICKSEN, ARBUTHNOT

13 /s/

14 ANDREW J. KOZLOW  
15 LEILA M. MOHSENI  
16 Attorneys for Defendants,  
17 MERCY RETIREMENT AND CARE  
18 CENTER and TAMRA MARIE TSANOS  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed with the court and served electronically through the CM-ECF (Electronic Case Filing) system to all counsel of record to those registered to receive a Notice of Electronic Filing for this case on this 3rd day of September, 2021.

**PERSON(S) SERVED:**

**Plaintiff's Counsel**

Michael A. Gawley  
J. Maxwell Cooper  
Kessenick, Gamma & Free, LLP  
1 Post Street, Suite 2500  
San Francisco, CA 94104  
T. (415) 362-9400  
F. (415) 362-9401  
[mgawley@kgf-lawfirm.com](mailto:mgawley@kgf-lawfirm.com)

Executed at Concord, California on September 3, 2021.

  
Penny Peterson